

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENDALL GUINN,	§
	§ No. 514, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID Nos. 0109014778
	§ 0112002560
Plaintiff Below-	§
Appellee.	§

Submitted: June 27, 2006

Decided: July 27, 2006

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 27th day of July 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kendall Guinn, filed an appeal from the Superior Court's September 30, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment

¹ The Superior Court adopted the findings and recommendation of the Superior Court commissioner. Del. Code Ann. tit. 10, § 512(b) (1) (b); Super. Ct. Crim. R. 61(a) (5).

of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) In April 2002, Guinn pleaded guilty to Burglary in the Second Degree, Assault in the Third Degree and Criminal Contempt of a Protection from Abuse Order. Additional charges of Burglary in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Assault in the Second Degree, Theft of a Firearm and Conspiracy in the Second Degree were dismissed in exchange for Guinn's guilty plea. As part of the plea agreement, Guinn agreed to be sentenced on the burglary conviction as a habitual offender.³ Guinn was sentenced on the burglary conviction to 10 years of Level V incarceration and was sentenced to 1 year of Level V incarceration on each of his other two convictions. Guinn did not file a direct appeal from his convictions and sentences.

(3) In his postconviction motion filed in the Superior Court, Guinn claimed that: a) his confession was coerced; b) he never agreed to the burglary sentence he received; and c) his counsel provided ineffective assistance. In his appeal filed in this Court, Guinn does not address these claims, but, instead, advances two new claims—d) that his nephew actually

² Supr. Ct. R. 25(a).

³ Del. Code Ann. tit. 11, § 4214(a).

committed the burglary to which he pleaded guilty and e) that he was unaware his original counsel had been replaced by a conflict attorney.

(4) Because Guinn failed to brief the claims that were denied by the Superior Court, he has waived those claims in this appeal.⁴ The claims are without merit in any case, because the transcript of Guinn's plea colloquy clearly reflects that his guilty plea was entered voluntarily and that he was satisfied with his counsel's performance.⁵ Guinn's claims—that his nephew actually committed the burglary and that he was unaware a conflict attorney had been assigned to him—were not presented to the Superior Court in the first instance. We, therefore, decline to address those claims in this appeal.⁶

(5) It is manifest on the face of Guinn's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁴ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁵ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁶ Supr. Ct. R. 8.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice